

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suede G. Kelly.

PJM Interconnection, L.L.C.

Docket Nos. ER03-405-001
ER03-405-002
and ER03-405-003

ORDER DENYING REHEARING AND
ACCEPTING COMPLIANCE FILING

(Issued November 26, 2004)

1. On April 11, 2003, Northeast Utilities Service Company (NUSCO)¹ and Public Service Electric and Gas Company, PSEG Energy Resources & Trade LLC and PSEG Power LLC (jointly, PSEG) sought rehearing and, in the alternative, clarification of the Commission's order issued on March 12, 2003 in Docket No. ER03-405-001.² As discussed below, we deny NUSCO's request for rehearing, and in granting PSEG's clarification request, find that there is no need to address its alternative rehearing request.³

¹ NUSCO makes this filing on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire.

² *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277 (2003) (March 12 Order).

³ On May 20, 2004, Commission staff requested information from PJM in order to address an argument raised by Allegheny Power in Docket Nos. ER03-194 and ER03-309. Believing that those dockets were related to Docket No. ER03-405, Commission staff also listed Docket No. ER03-405 in its data request. PJM's response, therefore, was submitted in all three dockets. We discuss PJM's response in Docket No. ER03-194 and ER03-309, and this order terminates Docket No. ER03-405-003.

2. On April 11, 2003, PJM submitted for filing a revised section 54.7.1 of its open access transmission tariff (PJM Tariff) in compliance with the March 12 Order. PJM seeks an effective date of March 20, 2003 for the proposed revision. We accept the revised provision and make it effective March 20, 2003, as discussed below.

Background

3. On January 10, 2003, PJM submitted for filing proposed changes to its tariff to create procedures and standardized terms and conditions for interconnection to the PJM transmission system of new and expanded merchant transmission facilities. PJM stated that the proposed tariff sheets apply to merchant transmission facilities the same standard procedures and terms and conditions for interconnection that already apply to interconnection of generation facilities in the PJM region, except where physical differences between transmission and generation facilities dictate otherwise. The proposed tariff sheets also include provisions that define the rights to transmission capability that developers of merchant transmission facilities will receive and the obligations that such developers will incur as owners of interconnected transmission facilities in the PJM region.

4. Merchant Transmission Facilities⁴ may consist of merchant direct current transmission facilities (Merchant D.C. Facilities) or merchant alternating current transmission facilities (Merchant A.C. Facilities). Merchant A.C. facilities may include not only free-standing transmission facilities that are interconnected with the PJM transmission system, but also Merchant Network Upgrades. Merchant Network Upgrades are “Merchant A.C. Transmission Facilities that are additions to,

⁴ PJM Tariff Section 1.18E defines Merchant Transmission Facilities as:

A.C. or D.C. transmission facilities that are interconnected with or added to the Transmission System pursuant to [Transmission Interconnection Procedures] and that are so identified on Attachment T to the Tariff provided, however, that Merchant Transmission Facilities shall not include (i) any Customer Interconnection Facilities (as defined in Section 50.15A), (ii) any physical facilities of the Transmission System that are in existence on the date this provision is filed with the Commission; (iii) any expansions or enhancements of the Transmission System that are not identified as Merchant Transmission Facilities in the Regional Transmission Expansion Plan and Attachment T to the Tariff, or (iv) any transmission facilities that are included in the rate base of a public utility and on which a regulated return is earned.

modifications or replacements of, physical facilities of the Interconnected Transmission Owner . . . that . . . are part of the Transmission System or are included in the Regional Transmission Expansion Plan.” PJM Tariff section 1.18D.

5. In its order, the Commission conditionally accepted the tariff sheets and made them effective March 12, 2003. PJM was directed to submit a compliance filing within 30 days from the date of the order to support the application to Merchant D.C. Facilities of the power factor design criterion stated in section 54.7.1 of the PJM Tariff.

6. NUSCO and PSEG sought rehearing, or in the alternative, clarification of the Commission’s March 12 Order. On April 11, 2003, PJM submitted for filing a revised Section 54.7.1 in compliance with the March 12 Order.

Discussion

Requests for Rehearing

7. NUSCO seeks rehearing of the Commission’s determination in its March 12 Order on two related arguments.

8. First, NUSCO argues that regional cost allocation of PJM-ordered upgrades to merchant transmission facilities could result in inappropriate subsidization of “at risk” merchant facilities. According to NUSCO, such subsidization could arise when merchant developers⁵ “piggyback” non-reliability based facilities when installing RTO-ordered reliability-based facilities. For example, it contends that PJM might require a merchant developer to expand the facility by 200 MWs for reliability, but the merchant developer could increase the facility to 300MWs with little incremental cost above the cost required for the 200 MW reliability expansion. NUSCO suggests that the difference between the costs of the 200 MWs and 300 MWs would be minimal. Thus, NUSCO maintains that rolling-in the costs of the 200 MWs required upgrades would benefit the merchant developer (who only pays the difference between the costs of 200 MW and 300 MW facilities) at the expense of the region responsible for paying the full cost of the 200MW reliability upgrades. For this reason, NUSCO asks the Commission that if an RTO can order regional cost allocation for reliability-based expansion of merchant transmission facilities, that the RTO must adopt procedures to ensure that either (1) the owner of such

⁵ This is a short-hand reference to a Transmission Interconnection Customer. Section 1.45B of the PJM Tariff defines a Transmission Interconnection Customer as “[a]n entity that submits an Interconnection Request to interconnect or add Merchant Transmission Facilities to the Transmission System or to increase the capacity of Merchant Transmission Facilities interconnected with the Transmission System in the PJM Region.”

merchant facilities cannot piggyback at risk facilities on the ordered reliability-based expansion facilities; or (2) if that such facilities are built, the RTO adopts appropriate cost allocation methodologies to ensure inappropriate subsidization does not occur.

9. Second, NUSCO argues that allowing the roll-in of certain costs associated with merchant projects blurs the Commission's requirement that the merchant developer assume the full financial risk of the project. It contends that it is difficult to distinguish between reliability-based and economic-based upgrades because all transmission upgrades have both an economic and reliability impact on the grid. Thus, it argues that it will be difficult to assess whether a merchant developer is passing on some of the economic risk of a project to regional customers, including the allocation of the operation and maintenance costs.

10. The Commission denies NUSCO's rehearing request. The PJM Tariff provides that the merchant developer must bear the full costs of its project. The merchant developer is appropriately charged all the costs, including operation and maintenance expenses, for the merchant project. But if PJM determines that reliability concerns require additional upgrades to the project in the future, those additional costs are not related to the original merchant transmission project, but to reliability concerns, and, therefore, should be treated no differently than all other transmission upgrades.⁶ We found that "PJM's proposal to allocate the costs of future upgrades among transmission owners in proportion to the load in each zone of the PJM Control Area to be just and reasonable."⁷ In effect, once constructed, the Merchant Network Upgrade becomes a part of the PJM infrastructure, and if future upgrades become necessary for reliability reasons, those upgrades should be treated the same as other reliability upgrades. The March 12 Order, therefore, found that rolling in the cost of a reliability upgrade into the regional cost-of-service rate "does not constitute a subsidy to the merchant developer because a system upgrade provides benefits to the entire system and was not a part of the cost when the [merchant developer's] project was originally contemplated."⁸

11. PJM has applied similar interconnection rules to merchant developers and to new generation projects. In either case, the project developer is not responsible for paying the costs of reliability or other network upgrades that would be built even if the project were not constructed. Section 42.2 of PJM's tariff provides that "[a] Transmission Interconnection Customer shall be obligated to pay for 100 percent of the costs of the minimum amount of Local Upgrades and Network Upgrades necessary to accommodate

⁶ *Id.* at P 34.

⁷ *Id.*

⁸ March 12 Order at P 34.

its Transmission Interconnection Request *and that would not have been incurred under the Regional Transmission Expansion Plan but for such Transmission Interconnection Request...*” (*emphasis added*). Similarly, while sections 37.7 and 42.7 of the PJM Tariff provide for contributions to network upgrade costs that previously had been assigned to a previous interconnection request, these provisions do not require a generator or merchant developer to contribute towards the cost of reliability upgrades required under the PJM Regional Transmission Expansion plan. Thus, both merchant developers and generators are not required under the PJM tariff to contribute to the costs of reliability upgrades that would be built regardless of the project even when those upgrades may reduce the cost of a generator or merchant transmission project.

12. The Commission sees no basis for requiring contributions from merchant developers that are not required of generators interconnecting with the grid and making use of possible network upgrades required by the Regional Transmission Plan. In both cases, the upgrade costs are necessary regardless of any generator or merchant transmission interconnection,⁹ and allowing such interconnections to make use of those facilities will facilitate both generator and merchant improvements to the system.

13. Moreover, it should also be recognized that the scenario posited by NUSCO where a merchant developer is the owner of merchant transmission facilities would be rare; it would apply only to stand-alone Merchant A.C. facilities, not to Merchant Network Upgrades. As PJM explained, Merchant Network Upgrades must be conveyed to the PJM Transmission Owner.¹⁰ Thus, the PJM Transmission Owner as the owner of the facility, not the merchant developer, as posited by NUSCO, would be responsible for building any needed reliability upgrades.¹¹

⁹ Reliability upgrades will be built even if no generator or merchant project is planned.

¹⁰ PJM’s Transmittal Letter at 8, Docket No. ER03-405-000 (Jan. 10, 2003). *See also* Sections 82.2.4 and 85.5 of the PJM Tariff.

¹¹ Merchant Transmission Facilities can be either Merchant A.C. Facilities or Merchant D.C. Facilities. The tariff provides that if PJM determines, in accordance with the Regional Transmission Expansion Planning Protocol, “that an addition or upgrade to Merchant A.C. Transmission Facilities is necessary, the *owner* of such Merchant A.C. Transmission Facilities shall undertake such addition or upgrade . . .” (*emphasis added*). Section 49A.2 of the PJM Tariff. The remainder Merchant A.C. Facilities would be stand-alone A.C. facilities. With regard to Merchant D.C. Facilities, PJM states that the obligation to build reliability upgrades “is properly not applied to owners of Merchant D.C. Transmission Facilities because direct current facilities necessarily serve particular

(continued)

14. PSEG seeks clarification, or in the alternative rehearing, that the revised PJM Tariff does not grant any merchant developer the right to upgrade or replace the existing facilities of a PJM transmission owner and does not obligate the PJM transmission owners to grant access to their property in order to undertake such upgrades or replacements. PSEG believes that the PJM Tariff does not require, but permits the development of merchant transmission facilities upon the agreement of a transmission owner and merchant developer. PSEG argues that if a transmission owner and merchant developer cannot agree upon the terms and conditions under which a developer may construct a Merchant Network Upgrade, following good faith negotiations at arm's length, the transmission owner has no obligation to permit the developer access to or any rights to upgrade or replace its system, facilities, or property, and may choose to construct any proposed upgrades to the interstate transmission system. PSEG asks the Commission to clarify that so long as a transmission owner maintains a clear policy regarding allowing merchant transmission companies to upgrade or replace its facilities, and consistently applies the policy in a non-discriminatory manner, the transmission owner has satisfied its obligations.

15. In the March 12 Order, the Commission found that the PJM Tariff does not provide merchant developers a right to undertake upgrades on the transmission facilities owned by a transmission owner or any third party, without the consent of that owner.¹² As the Commission stated: "The Commission finds that PJM's proposed tariff provisions do not provide developers of Merchant Network Upgrade a right to undertake upgrades on transmission facilities owned by others. Moreover, they do not purport in any way to preempt any state's siting or other jurisdiction with respect to any proposed merchant transmission facilities."¹³ We note that on rehearing, PSEG raises the identical arguments it raised in its protest to PJM's initial filing in this docket. As discussed above, the March 12 Order addressed each of PSEG's arguments. We, grant PSEG's request for clarification to the extent discussed above, and since the clarification request is granted, we do not need to address the alternative rehearing request.

customers and because it is unlikely that upgrading D.C. facilities either will improve the reliability of A.C. transmission network on which load in the PJM region principally relies or would efficiently accommodate interconnection of new facilities." PJM's Transmittal Letter at 10, Docket No. ER03-405-000 (Jan. 10, 2003).

¹² March 12 Order at P 16-21.

¹³ *Id.* at P 21.

C. PJM's Compliance Filing

16. PJM revised section 54.7.1 of its tariff to specify that Merchant D.C. Transmission Facilities must be designed to maintain a power factor of at least 0.95 leading and 0.95 lagging at the point of interconnection over the facility's normal operating range.¹⁴ PJM states that this is similar to the power factor design criterion stated in section 54.7.1 for the generation facilities. PJM explains that it is appropriate to establish such a criterion for D.C. transmission facilities that are interconnected with the A.C. transmission network because the physical characteristics of D.C. facilities can cause a reactive drain on PJM's A.C. transmission system. PJM states that as long as a Merchant D.C. Facility is designed to maintain a power factor within the range prescribed in section 54.7.1, the project developer can decide whether to design for capability to vary the facility's reactive output on demand.

17. According to PJM, while TEUS had originally objected to this provision, it finds the revised section 54.7.1 submitted as part of the compliance filing acceptable.

18. We find that PJM's compliance filing complies with our March 12 Order; therefore, we will accept the revised Section 54.7.1 and make it effective March 20, 2003.

The Commission orders:

(A) The request for rehearing by NUSCO is hereby denied, as discussed in the body of this order.

(B) PSEG's motion for clarification is hereby granted, as discussed in the body of this order.

¹⁴ PJM's revised Section 54.7.1 now states that "[a] Transmission Interconnection Customer interconnecting Merchant D.C. Transmission Facilities shall design its Customer Facility to maintain a power factor at the Point of Interconnection of at least 0.95 leading and 0.95 lagging, when the Customer Facility is operating at any level within its approved operating range."

(C) PJM's compliance filing is accepted as discussed in the body of this order.

(D) Docket No. ER03-405-003 is terminated.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.